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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**

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9 United States of America,  
10 Plaintiff,

11 v.

12 Daniel David Rigmaiden (1),  
13 Defendant.

No. CR08-0814-01-PHX-DGC

**ORDER**

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15 In an order dated March 28, 2012, the Court called for the government to respond  
16 to Section I(E) of Defendant's motion for reconsideration. *See* Doc. 788 at 3-4. That  
17 section argued that the Court should reconsider its order denying Defendant's request for  
18 disclosure of communications between the government and Verizon Wireless or, in the  
19 alternative, his request for the FBI's "destroy the evidence" policy. Doc. 787 at 19-21.  
20 The government has filed a response. Doc. 795. Having considered Defendant's  
21 argument and the government's response, the Court will deny Defendant's request for  
22 reconsideration in Section I(E).

23 The government states that communications regarding the distance of the aircard  
24 from cell towers was obtained orally in a telephone conversation between the FBI and a  
25 representative from Verizon Wireless. Doc. 795 at 2. The government states that it has  
26 searched for any written record of the distance information and has found none. *Id.*  
27 Rule 16(a)(1)(E)(i) requires the government to disclose documents or other tangible  
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1 objects within its possession, custody, or control. The rule does not require the  
2 government to create documents that may provide information a defendant desires to  
3 obtain, nor does it require the government to present agents or witnesses for interviews or  
4 in-court examination. *United States v. Mahon*, No. CR09-0712-PHX-DGC, 2011 WL  
5 5006737 at \*3 (D. Ariz., Oct. 20, 2011) (citing cases). The rule “triggers the  
6 government’s disclosure obligation only with respect to documents within the federal  
7 government’s actual possession, custody or control.” *United States v. Gatto*, 763 F.2d  
8 1040, 1048 (9th Cir. 1985). As a result, the government is not required by Rule 16 to  
9 produce the information obtain orally from Verizon Wireless.

10 The government also states that it has produced to Defendant the relevant portions  
11 of the FBI’s policy concerning non-retention of information obtained during operations  
12 such as the aircard locating mission. Doc. 795 at 2. Defendant has thus obtained the  
13 alternative information he seeks in Section I(E).

14 For these reasons, the Court will deny the request for reconsideration contained in  
15 Section I(E) of Defendant’s motion (Doc. 745).

16 Dated this 5th day of April, 2012.

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20 David G. Campbell  
21 United States District Judge  
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